

CIVIL REVISION APPLICATION NO. 790 OF 1993.

Date of decision: 6.5.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. J.R. Nanavati, advocate for petitioners.

Mr. A.J. Patel, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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May 6, 1996.

Oral judgment:

This Civil Revision Application preferred by original defendants No.6 and 7 in Civil Suit No.20 of 1990 filed by respondents No.1 to 10, who are original plaintiffs, in the Court of learned Civil Judge (Senior Division), Jamnagar, for partition, redemption, pre-emption and mesne profits, was disposed of by this Court vide order dated 22.9.1995. On perusal of order it appears that the matter was disposed of in absence of the respondents and, therefore, one of the respondents, i.e., original plaintiff No.2 filed Misc. Civil Application No.230 of

1996 for setting aside the order and/or rehearing the matter on merits. With the consent of both the parties, Misc. Civil Application No.230 of 1996 was allowed and this revision application is reheard on merits.

As stated above, the petition has been filed by defendants No.6 and 7 and the respondents are the original plaintiffs. Since controversy centres around exhibition of some of the documents produced by the plaintiffs in suit proceedings, I will refer the parties according to their status in the original suit instead of status in this petition.

In order to appreciate controversy between the parties, it would be worthwhile to narrate the circumstances which have given rise to the present litigation.

The plaintiffs produced some documents alongwith list mark 4, mark 20 and mark 64. The defendants admitted some of the documents and consented for being exhibited. Accordingly, documents mark 4/16 was exhibited as Ex.101, document mark 20/204 to 20/208 are exhibited as Exhibits No.122 to 126. Similarly document at Ex.64/40 is exhibited as Ex.141. Despite the fact that documents were produced by the plaintiffs as required under Order 13 Rule 1 of Civil Procedure Code, the plaintiffs made endorsement with respect to aforesaid documents that are not admitted and should not be exhibited though the documents have been admitted by other side. On exhibiting the documents, the plaintiffs again applied for deexhibition and the court orders for deexhibition. Aggrieved by said order the defendants approached this court for setting aside the order of deexhibition.

As a rule of evidence, allegations and averments made by any of the parties in their pleadings have to be proved unless are specifically admitted by adversary. Similarly, the party one who relies upon document in support of its contention has to produce as provided under Order 13 Rule 1. After production of document, the next stage would be about proving them. According to the rule of evidence, any document produced on record has to be proved in accordance with provisions of Indian Evidence Act unless the contesting party admits such documents and dispenses with proof. In this case the documents relied upon and produced by plaintiffs have been admitted by defendants and, therefore, the court has rightly exhibited those documents. Once such documents are produced and relied upon by the plaintiffs it is not open to the plaintiffs to retract and object for exhibition if other party admits. The very fact that the

party produced documents in court in support of its contention shows that the party is relying upon those documents and have to be received in evidence unless objected by contesting party. Therefore, once having produced the party cannot say 'no' for exhibition when once admitted by other side. It is open for contesting party only to object and ask for strict proof in accordance with law or even the court may also require so. In this case the documents were produced by the plaintiffs and have been admitted by defendants and, therefore, the court has rightly exhibited. In my view no error of law has been committed consequently the same cannot be deexhibited. The impugned order for deexhibition would be de hors the provisions of law and deserves to be set aside. Mr. Patel for the respondents apprehends that by exhibiting those documents he would be denied his right of advancing his contentions. In my view, his apprehension is illfounded because exhibition of documents permits the court to refer to evidence. Exhibition does not debar any party from challenging evidential value or legality thereof. In view of aforesaid facts and circumstances, I find merits in the revision application.

In the result, the revision application is allowed. The order passed by the learned Civil Judge (S.D.), Jamnagar below Ex.183 in Special Civil Suit No.20 of 1990 dated 19.1.1993 is set aside. Rule made absolute accordingly with no order as to costs. Record of trial court be sent back at the earliest.